

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 18, 2005

IN RE:

**JOINT PETITION FOR ARBITRATION OF NEWSOUTH)
COMMUNICATIONS CORP, NUVOX COMMUNICATIONS,) DOCKET NO.
INC., KMC TELECOM V, INC., KMC TELECOM III LLC, AND) 04-00046
XSPEDIUS COMMUNICATIONS, LLC ON BEHALF OF ITS)
OPERATING SUBSIDIARIES XSPEDIUS MANAGEMENT CO.,)
SWITCHED SERVICES, LLC AND XSPEDIUS MANAGEMENT)
CO. OF CHATTANOOGA, LLC OF AN INTERCONNECTION)
AGREEMENT WITH BELL SOUTH TELECOMMUNICATIONS,)
INC.)**

ORDER DESIGNATING ISSUE STATEMENTS

On December 3, 2004, New South Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Chattanooga, LLC (the "Joint Petitioners") filed a revised Joint Issues Matrix in this docket. The Joint Petitioners indicated they were unable to resolve their differences with BellSouth Telecommunications, Inc. ("BellSouth") regarding the competing issue statements for Item No. 5/Issue No. G-5, Item No. 6/Issue No. G-6 and Item No. 46/Issue No. 2-28 listed in the matrix. At the status conference held on November 19, 2004, the Pre-Arbitration Officer had suggested that if no agreement were reached by the parties regarding competing issue statements, the statements might be reworded by the Pre-Arbitration Officer for arbitration before the panel.¹ However, the Pre-Arbitration Officer finds that, due to the nature

¹ Transcript of Proceedings, p 13 (November 19, 2004).

of the differences between the statements of the issues presented by the parties, the differing issues statements should be designated as a subpart of each issue. As a result, the following issues will be stated as indicated below:

Item No. 5/Issue No. G-5

(A) To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be required to indemnify the other Party for liabilities not limited?²

(B) If the CLEC does not have in its contract with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risk?³

Item No. 6/Issue No. G-6

(A) Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?⁴

(B) How should indirect, incidental or consequential damages be defined for purposes of the Agreement?⁵

Item No. 46/Issue No. 2-28

(A) May BellSouth refuse to provide DSL services to CLEC's customers absent an Authority order establishing a right for it to do so?⁶

(B) Should CLEC be entitled to incorporate into the Agreement, for the term of this Agreement, rates, terms and conditions that are no less favorable in any respect, than the

² Subpart (A) is the Joint Petitioners' original statement of this issue

³ Subpart (B) is BellSouth's original statement of this issue

⁴ Subpart (A) is the Joint Petitioners' original statement of this issue

⁵ Subpart (B) is the BellSouth's original statement of this issue

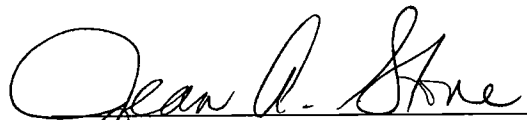
⁶ Subpart (A) is the Joint Petitioners' original statement of subpart (A) of this issue

rates, terms and conditions that BellSouth has with any third party that would enable CLEC to serve a customer via a UNE loop that may also be used by BellSouth for the provision of DSL services to the same customer?⁷

(C) Should the CLECs be allowed to incorporate any Commission decision that required BellSouth to provide FastAccess over UNE-P?⁸

IT IS THEREFORE ORDERED THAT:

The Issues Statements identified above are designated as stated herein.


Jean A. Stone, Counsel
as Pre-Arbitration Officer

⁷ Subpart (B) is the Joint Petitioners' original statement of subpart (B) of this issue

⁸ Subpart (C) is BellSouth's' original statement of this issue